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22, 1954

IN THE PRIVY COUNCIL

No. 9 of 1954

ON APPEAL FROM THE COURT OF APPEAL
OF THE FEDERATION OF MALAYA

B E T W E E N :

WONG POOH YIN alias KWANG SIN
alias KAR SIN Appellant

- and -

THE PUBLIC PROSECUTOR ... Respondent

RECORD OF PROCEEDINGS

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UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
LEGAL STUDIES

IN THE PRIVY COUNCILNo. 9 of 1954

ON APPEAL FROM THE COURT OF APPEAL

OF THE FEDERATION OF MALAYAB E T W E E N :WONG POOH YIN alias KWANG SIN
alias KAR SINAppellant

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THE PUBLIC PROSECUTOR

RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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IN THE PRIVY COUNCIL

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WONG POOH YIN alias KWANG SIN
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-- and --

THE PUBLIC PROSECUTOR ... Respondent

RECORD OF PROCEEDINGS

10

No. 1
CHARGE SHEET

In the High
Court

No. 1.

THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE HIGH COURT AT KOTA BHARU, KELANTAN
CRIMINAL TRIAL NO.11 OF 1953

Charge Sheet
28th April,
1953.

C H A R G E S

To:

Wong Pooh Yin alias Kwang Sin alias
Kar Sin s/o Wong Niang Fui.

20

You are charged at the instance of the Public
Prosecutor and the charges against you are:-

First Charge:

That you, on or about the 25th day of November, 1952, in the Temiar Ladang Area known as Gua Chah in the District of Gua Musang, Ulu Kelantan, did carry a firearm, to wit, a white handled revolver .38 without lawful authority therefor and

In the High
Court

No. 1.
Charge Sheet,
28th April,
1953 -
continued.

thereby committed an offence punishable under Regulation 4(1)(a) of the Emergency Regulations, 1951.

Second Charge:

That you, on or about the 25th day of November, 1952, in the Temiar Ladang Area known as Gua Chah in the District of Gua Musang, Ulu Kelantan, Kelantan did consort with Cheah Fong Sin alias Ah Pooi s/o Cheah Wai who had in his possession a firearm, to wit, a rifle in contravention of the provision of Regulation 4 of the Emergency Regulations, 1951, in circumstances which raised a reasonable presumption that you were acting with the said Cheah Fong Sin in a manner prejudicial to the maintenance of public order and thereby committed an offence punishable under Regulation 5(1) of the Emergency Regulations, 1951.

10

Dated this 28th day of April, 1953.

Sgd. B.J. Jennings
DEPUTY PUBLIC PROSECUTOR
KELANTAN & TRENGGANU

20

No. 2.
Court
proceedings,
20th July,
1953.

No. 2.
COURT PROCEEDINGS

KOTA BHARU ASSIZE

Cr. Note Book No.2/1953.

Monday, 20th July, 1953.

Book "A"

KOTA BHARU CRIMINAL (EMERGENCY) TRIAL NO.10/53.

Public Prosecutor Vs. Cheah Foon Sin alias
----- Ah Phooi s/o Cheah Wai.

Jennings, D.P.P. for P.P.
Benjamin for Accused (Assigned).

Charges:-

- (1) Possession of a revolver under Regulation 4(1)(a) of the Emergency Regulations, 1951;
- (2) Consorting under Regulation 5(1) of the Emergency Regulations, 1951.

30

Jennings informs Court that he is prosecuting on the 1st charge only and applies that the accused in

the next case No. 11/53 (Wong Pooh Yin) be charged and tried together under Section 170 Cr. P.C. The two accused persons were arrested at the same time and are charged for offence committed in the same transaction. Wong Pooh Yin is being charged with two offences under the same Regulations but only one charge under Regulation 4(1)(a) will be proceeded with.

In the High Court

No. 2.

Court proceedings, 20th July, 1953 - continued.

- 10 Benjamin who is assigned for both cases objects to joint trial submitting that the two accused are being charged for different offences - one in respect of a revolver and the other for a rifle - not in the same transaction and joint trial may prejudice both accused.

Court orders separate trials.

Jennings applies for case No.11/53 to be heard first.

Application allowed.

KOTA BHARU CRIMINAL (EMERGENCY) TRIAL No. 11/53

- 20 Public Prosecutor Vs. Wong Pooh Yin alias Kwang Sin alias Kar Sin s/o Wong Niang Fui.

Emergency Trial Certificate - Ex. Pl.

Ex. Pl

Charge - Possession of a rifle under Regulation 4(1)(a) of Emergency Regulations is read out, interpreted and explained to Accused.

Plea - Claims to be tried.

Assessors chosen - (1) Mr. Cheah Eng Teng
(2) Inche Abdul Aziz

- 30 Jennings opens -

Haji Ahmad bin Haji Emran offered as Interpreter from English into Temiar and vice versa.

Temiar Liaison Officer under Development Officer, Kelantan. I know nothing of this case. I do not know the Temiar witnesses in this case.

In the High
Court

No. 3.

Evidence of Chawan.

Prosecution
Evidence.

No. 3.

Chawan,
Examination.

Jennings calls:-

P.W.1. - Chawan s/o Muda Salleh a.s. in Temiar.

Penghulu of Gua Cha. There are many Temiars in
Gua Cha. Became Penghulu since pre-war.

Some months ago I and a party of Temiars
brought two male Chinese to Haji Ismail (Haji
Ismail bin Haji Awang identified). The Police were
not with Haji Ismail at the time. The police came
later. I was present when the Police arrived. 10

One of the two Chinese is the accused; he was
the senior of the two.

Some days before I brought out the Accused
and the other Chinese to Haji Ismail I received
information of their presence in the area. As a
result of that information I sent two wireless
signals to Haji Ismail.

I sent for Haji Ismail because I wanted some
food to feed my men in order to arrest the two
Chinese. The Police were available in my Kampong.
I did not ask for Police assistance because I was
afraid that they would attack the two Chinese and
the Chinese escape. 20

Haji Ismail gave me food twice; on the first
occasion I gave it to the two Chinese and the
second occasion equally to my men and the two
Chinese. I sent Permaku Abah (identified) to take
the food to the Chinese. Permaku Abah is my
assistant. He came back to me reporting that he
had delivered the Chinese with the food. He also
gave me one red bank note of \$10/- saying that he
wanted food for the two Chinese. I handed the
money over to Haji Ismail. I got some food from
Ismail. I sent it to the two Chinese by another
person, not Permaku Abah. I also sent word by
that person inviting the Chinese to move to a
better area. I wanted them to move because they
had called me to meet them at the place where they
were and that place was dangerous to me and fur-
ther the new site would be nearer to the Police
Post. That place was also dangerous to my men. I
did not go with my men to meet the Chinese at the
place where they were because the area was under
blukar and low-lying. 30 40

My invitation was accepted by the Chinese. I had six of my men to construct a hut for them on the new site. The work was completed in a few hours. I told Haji Ismail before I sent the invitation.

In the High Court

Prosecution Evidence.

No. 3.

Chawan,
Examination continued.

10 The Chinese moved into the new hut. I then gave my men some food so as to make them strong to arrest the Chinese. I gathered 68 men altogether and after they had been fed I gave them instructions to arrest the Chinese. I sent my men ahead of me and I followed them to the hut. Some of my men surrounded the hut. I went into the hut and I saw the two Chinese squatting with some of my men sitting around them. When I first sighted the two Chinese I saw one of them with a pistol and a hand-grenade and that person is the Accused. The pistol was on his waist. I stretched out my hand to greet him; he held out his and I gripped it. After gripping I pushed him back whereupon he fell on his back. My men closed in and caught hold of him. I was still holding him when my men closed in on accused. Some of my men overpowered the other Chinese.

I observed the pistol on Accused's waist. It was in a holster. The pistol has a yellow handle. I could see the handle because it jutted out of the holster.

30 I took possession of the pistol which I handed later to the Police at the same time as I handed the Accused to them.

I can identify the pistol if I were to see it again. This is it (a revolver is shown to witness). Tendered, not objected to, admitted and marked as Ex. P2. None of my men have a pistol like Ex. P2.

Ex. P2.

I showed Ex. P2 to Haji Ismail.

40 XXD. I came to know of the existence of the two Chinese in the vicinity about three days before the day they were brought out. I received the information of their existence from one of my men and of their desire to see me. My informer was Long Babi.

Cross-examination.

On the day that I received the information I sent them about ten roots of tapioca.

I have never come into contact with any strange Chinese before this incident.

In the High
Court

Prosecution
Evidence.

No. 3.

Chawan,
Cross-
examination -
continued.

I had instructions to be on the look-out for and report to the authorities of strange persons in my area.

I know that I would be rewarded for arresting any terrorist. I received money reward for arresting the Accused. I do not know the amount because I cannot count. That money was in a bundle of notes about one inch thick. I divided the money among my men.

When I conceived arresting the Accused I had no idea of getting a reward. 10

It is not true that I did not want the Police to come in because I had my mind on reward.

The new hut is about walking distance from morning to noon from the old hut.

I did not attempt to arrest the Accused on the same day as I received information of his existence because I had to collect my men from the jungle. It took my men two days to get together. 20

I was afraid that the Police would bungle the whole matter if they were brought in.

The Accused could have gone to the Police if he wanted to surrender. It was not necessary for him to see me if he wanted to surrender.

On the first day I sent Accused tapioca; on the second day tea, milk, sardines, rice and tobacco. I had my men to put up a new hut for them. I cannot remember if I had a dog sent to Accused and the other Chinese. 30

This incident happened a long time ago that I cannot remember every detail of it. I can remember most of it.

I am certain that it was a red note that I received from Permaku Abah. It is similar to that (Benjamin holds out one piece of \$10/- note). I made a statement to the Police a few days after his arrest. I cannot remember if I said in my statement that the money was in two \$5/- notes.

The evidence I have given is the best that I can remember. 40

When I shook hands with Accused he was squatting. My men had to wait for orders from me before they could overcome the Accused.

Q. Was Accused's attitude hostile or friendly when he greeted you?

In the High Court

A. Friendly. He greeted me "Salamat Penghulu".

Before Accused could say anything further he was overpowered.

Prosecution Evidence.

No. 3.

I did not say to Accused as I took him out, "Don't worry, nothing would happen". I heard someone say those words at the time Accused was arrested. I cannot remember who the person was. I did not question Accused why he was in the vicinity.

Chawan, Cross-examination - continued.

Q. Did the Accused have \$395/-, one wrist-watch and two fountain pens?

A. I do not know if he had them.

I never had any information that Accused wanted to surrender before I arrested him.

Re'Xd. I would have taken the Accused straightaway to the Police Station if I knew that he wanted to surrender. I would not have a hut built for him either in that case.

Re-examination.

The most money I have ever had was 5 or 6 pieces of red notes.

I do not know the value of the red note that was shown to me by Counsel (Benjamin).

I did not see my men searching the person of Accused before he was handed to the Police. I was not all the time with the Accused.

By 2nd Assessor. I did see Accused being dispossessed of Ex. P2.

By 1st Assessor. I cannot distinguish between a revolver and a pistol.

Adjourned at 1.05 p.m. to 2.15 p.m.

Sgd. A. Hamid.

In the High
Court

No. 4.

EVIDENCE OF PERMAKU ABAH

Prosecution
Evidence.

No. 4.

Permaku Abah,
Examination.

Resumed at 2.15 p.m.

P.W.2. - Permaku Abah s/o Puteh a.s. in Temiar-

Assistant Penghulu to P.W.1. at Gua Cha.

Some months ago I brought two male Chinese before Haji Ismail. I can recognise both Chinese. Accused is one of them. Shortly before I took them to Haji Ismail I brought them food twice. The first time I went to them with the food they were one day's journey from my house, they were seated in a hut. I then saw a pistol on the waist of Accused. I did not speak to Accused. After I gave them the food Accused gave me \$10/- for which he wanted me to buy some rice, sardines and milk. He spoke to me in Temiar. He gave me no other message.

10

I handed the \$10/- to P.W.1. Later I received some food from P.W.1. I took the food to the two Chinese at the same place. Two other Temiars accompanied me. The Accused still had the pistol on his person.

20

I received instructions from P.W.1. to build a hut for the two Chinese.

On the day the two Chinese were arrested they were in the new house. I went to that house. I saw the Accused and the other Chinese. The pistol was still on the waist of the Accused.

On P.W.1's signal the two Chinese were arrested. P.W.1. shouted to me and the other Temiars to arrest the Accused. As soon as P.W.1. entered the hut he went up to Accused and arrested him. P.W.1 shook hands with Accused before he shouted to us to arrest the Accused.

30

I can recognise the pistol by its white handle. Ex. P2 is it. None of my men had a pistol like Ex. P2.

Cross-
examination.

XXD. - I know there is a reward for the capture of a terrorist. A monetary reward had been paid in respect of Accused's arrest. I received my share. I do not know the amount. It was as thick as my hand. I do not know if the other Temiars received their shares of reward.

40

Nobody refreshed my memory this morning of this incident.

I did not hear at any time before the Accused's arrest the words "Serah diri" (surrender) said by the Chinese.

I made a statement to the Police a few days after the incident. In that statement I did not say that Accused gave me the \$10/- to buy food and biscuits.

In the High Court

Prosecution Evidence.

No. 4.

Permaku Abah, Cross-examination - continued.

10 I suggested to the Chinese that they move to a better place.

I did not take part in the building of the new hut but I supervised some other Temiars at work. I returned to my house as the hut was almost completed. The next time I went again to the hut was when I took a dog to the two Chinese on the same day that the hut was completed. The arrest was also on the same day.

20 The new hut is half a day's walk from the place where the two Chinese were at first. I told the two Chinese that the new hut was ready.

I carried a message from the Chinese to P.W.1. that the former wanted to meet the latter. P.W.1. did not say anything to it.

I came to know that the Chinese were in the blukar about three days before their arrest. On that day some of the Temiars were in the jungle. We all gathered together about two days later. We did not have much food ourselves to eat.

30 The Chinese were not hostile towards me before their arrest.

On the very first time the Chinese met me they said they would like to meet P.W.1. They did not say to me that they wanted to surrender.

Q. Did it ever occur to you that if you effected the arrest you would be rewarded?

A. No.

It was not for the reward that we planned out the arrest of the two Chinese.

40 Re'Xd. - All the Temiars at the camp knew what was to happen and what was to be done to the Accused and the other Chinese.

Re-examination.

By 1st Assessor. I also saw a hand grenade on the Accused's waist the first time I saw him and on the subsequent occasions.

In the High
Court

Prosecution
Evidence.

No. 4.

Permaku Abah,
Re-
examination
- continued.

By 2nd Assessor. The conversation between Accused and I was in Temiar. We understood each other well. I was frightened at the sight of the fire-arms but I was compelled to meet the two Chinese. I was with two other Temiars when I first went to meet the two Chinese. At the first meeting I got to within six feet of the Accused. The first hut was on posts raised from the ground. I did not go into the hut. I stood on the ground. I went the first time to the Accused was as a result of information received from the Accused.

10

The Chinese were within our area and unless we met them they would create trouble. I did not report their presence to the Police because that would be within P.W.1's power.

No. 5.

Haji Ismail,
Examination.

No. 5.

EVIDENCE OF HAJI ISMAIL

P.W.3 - Haji Ismail bin Haji Awang a.s. in Malay!

Dresser in charge of Temiars at Gua Cha for the last 32 months. I know the Temiars in the area well and they trust me.

20

(At this stage Court adjourns for five minutes on the application of Benjamin).

P.W.1 is the Penghulu of Temiars.

A party of Temiars came to me bringing two male Chinese one of whom is the Accused. P.W.1 and P.W.2 were among the Temiars who numbered 68. This was on the 25th November 1952 at about 4 p.m. Before their arrival I heard some cheers coming from the direction of the edge of the farm where the Temiars live. P.W.1's house is about one-quarter mile from my house. My house is about the same distance to the Police Station.

30

When the Temiars came to me they brought Ex. P2. with them as well. Ex. P2 was in P.W.1's possession. He showed it to me. He did not tell me from which of the two Chinese he recovered Ex. P2.

L/Corporal Omar bin Hussain (identified L/C. 7762) was with the party. He took possession of Ex. P2 and took over Accused.

40

On 22.11.52 I received two wireless signals while I was in Kuala Betis from Che Gu Ludin to return to Gua Cha. On the following day I returned to Gua Cha arriving there at about 9 a.m. On arriving I saw many Temiars at my house including P.W.1. P.W.1 told me that there were two Chinese at the edge of their farm and that the Temiars would offer their services to capture the Chinese. I suggested that the Police be consulted. The Temiars refused to seek Police aid because it would take some time to contact the Police and the Chinese would escape. They also refused because they wanted to avoid blood-shed which would force them to vacate the place. It was the Temiars' belief. I provided them with food on two occasions.

I received from P.W.2 \$10/- in two \$5/- notes.

Before the arrest of the two Chinese I did not hear from any of the Temiars that the Chinese wanted to surrender.

I informed the Police and told them to stand by.

Ex. P2 was in a holster when it was shown to me. I cannot identify the holster which is similar to the one in Court (marked "z" for identification). Very few of the Temiars in my area know about the value of money and they can count only up to figure 100.

There is generally a reward for the capture of a terrorist. It was not for the reward that made the Temiars wish to arrest the Chinese.

There was no obstruction to Accused surrendering had he wished to do it.

The Police strength at Gua Cha was 14 to 15 at that time. Normally it would be 30.

XXD. - I cannot say if the Temiars knew that there is a reward for a captured terrorist.

About 100 Temiars all males, men and boys included were at my house when I reached home. The men were about 80.

The Temiars did not go on the 23rd to effect the capture because they wanted to draw out the Chinese to the open area. The Temiars have their own way of doing things. They do not have much rice and enough tapioca to eat. They received food from me to give to the Chinese so as to gain the confidence of the Chinese.

In the High Court

Prosecution Evidence.

No. 5.

Haji Ismail, Examination - continued.

Cross-examination.

In the High
Court

Prosecution
Evidence.

No. 5.

Haji Ismail,
Cross-
examination
- continued.

Re-
examination

The place where the Chinese were originally was in the jungle at the edge of the Temiars' farm about $1\frac{1}{2}$ mile from my house. I cannot walk $2\frac{1}{2}$ miles an hour.

P.W.1 told me that if I were to summon the Police the Temiars would not assist me in any way. However I reported the matter to the Police.

I do not understand the mentality of the Temiars because of its primitiveness.

The Temiars took a few days to start arresting the Chinese because they wanted to put up a new hut first for them.

Re'Xd. - Temiars are harmless people.

By Court - I did not go to the spot where the Chinese were first seen to live. I obtained the location from the Temiars.

Adjourned at 5 p.m. to 9.30 a.m. to-morrow.

Sgd. A. Hamid.
20.7.'53.

10

No. 6.

Permaku Abah,
(recalled)

Examination.

No. 6.

EVIDENCE OF PERMAKU ABAH (recalled)

Tuesday, 21st July, 1953.

Parties as before.

P.W.2 recalled by Prosecution. Reaffirmed.

Ex. P3.

I can identify the holster of Ex. P2. "Z" is it - tendered, not objected to, marked Ex. P3.

When I saw the white handle of Ex. P2, I thought it was a pistol.

No. XXn.

20

No. 7.
EVIDENCE OF OMAR.

In the High
Court

Prosecution
Evidence.

P.W.4 - Omar bin Hussain a.s. in Malay. L/C No.
7762 stationed at Merapoh.

No. 7.

Omar,
 Examination.

In November 1952 I was stationed at Gua Cha. I was there when a party of Temiars brought two male Chinese one of whom is the Accused. This was on 25.11.52. I took over custody of the two Chinese, Ex. P2, Ex. P3 among other things.

10 I handed them over to A.S.P. Sowerby. Ex. P2 was in Ex. P3.

I came to know of the two Chinese on the 23rd November, 1952 from P.W.3. I considered it proper for the Temiars to carry out the operation themselves and for the Police to stand-by.

P.W.3 made a report in writing to me on the 25.11.52.

Neither Accused nor the other Chinese produced any licence or authority in respect of Ex. P2.

20 XXD. - P.W.3 did not know where the two Chinese were when he first informed me of them. P.W.3 told me that the Temiars said that there were two Chinese within our vicinity.

Cross-
 examination.

I had enough men to catch the Chinese if the Temiars wanted us to do so. The Temiars did not want the Police to take part in the arrest.

Re'Xd. - It would be difficult and dangerous to capture the two Chinese if they were in the jungle.

Re-
 examination

In the High
Court

No. 8.

EVIDENCE OF J.D. SOWERBY.

Prosecution
Evidence

No. 8.

J.D. Sowerby,
Examination.

P.W.5 - John Derek Sowerby a.s. in English. A.S.P.
stationed at Kuala Krai.

On information received on 28.11.'52 I flew to Gua Cha from Kuala Krai. Insp. Charles Ung accompanied me. At Gua Cha I took over the custody of Accused and another male Chinese. I took possession also of some exhibits including Ex. P2 and Ex. P3.

10

I tested Ex. P2 with three rounds of cartridges I found it serviceable.

Cross-
examination

XXD. - A reward in kind and money was paid to the Temiars who arrested the Accused and the other Chinese.

Accused was taken to Kuala Lumpur for the purpose of investigation.

CASE FOR PROSECUTION

Defence
Evidence

No. 9.

Wong Pooh Yin,
Examination.

No. 9.

EVIDENCE OF WONG POOH YIN

20

The three alternatives are explained to Accused.

Accused consults Benjamin after which he elects to go to the witness box.

D.W.1 - Wong Pooh Yin a.s. in Hakka. 28 years old.

I was arrested on 25th November last year. Sometime in November 1949 I went underground. I was in different places and eventually came to Kelantan. I belonged to a party consisting of 60 or 70 person I and another member of the party were arrested at the same time. I do not know where the other members of the party had gone to as I and the other man left them about 10 days before we contacted the Temiars. I left them because whilst in the jungle

we have read the Government pamphlet calling on us to come out to surrender and that we would be properly treated. The two of us left the party with the intention to surrender to the authorities. We carried with us our ammunition. I brought out Ex. P2.

In the High Court

Defence Evidence.

No. 9.

Wong Pooh Yin
Examination -
continued.

After getting away from my comrades I first contacted 5 or 6 Temiars who are not in Court.

10 I speak little Temiar. I told those few Temiars that I and my friend wanted to surrender to the authorities and requested them to assist and that we wanted to see the Penghulu. They made known to us that they would arrange our surrender to the Police. They went away after the conversation.

The same day they brought us ten roots of tapioca.

20 About ten Temiars came on the next day. P.W.2 was one of them. They brought us some milk, sardines, rice and tea because we asked them for some food when we first met them.

The foodstuffs were not given to us free. They asked us to pay for them. We gave them \$10/- in two \$5/- notes.

There was a suggestion that we move into new quarters.

30 On 24th November between 8 and 9 Temiars came among whom was P.W.2. They told us that the Government was willing to let us surrender but we had to wait for sometime to enable them to make arrangements.

We told them that as we desired to surrender they could take away our ammunition and firearms. We were told to keep them till it was arranged for the Police to take them away.

It was indicated to us that we would have to move on the next day to a place nearer to the Police Station.

40 On 25th November about 8 Temiars came. P.W.2 was among them. They took us to the new place. Arriving at the new place they brought us a dog which we slaughtered and ate. On the same day at about 3 p.m. about 60 Temiars came under the leadership of P.W.1. I greeted P.W.1 warmly. I shook his hand and saluted "Selamat". P.W.1 said that arrangements for our surrender had been

In the High
Court

Defence
Evidence

No. 9.

Wong Pooh Yin,
Examination -
continued.

completed and that the Government regulations were that our hands must be tied up. Our hands were tied to the back.

When I was on the point of having my hands tied up I surrendered my revolver and ammunition to one of the Temiars in the presence of P.W.1.

The attitude of the 60 Temiars towards me was friendly when they came. When they led me away I thought they were taking me for the purpose of surrender.

10

I did not surrender to the Police because from the Government pamphlets that I have read it would be better to contact the public to arrange for me to surrender. Further as I had firearm there would be misunderstanding if I were to go to the Police direct.

Cross-
examination.

XXD. - My commander gave me Ex. P2 to use. I had no lawful authority to carry Ex. P2.

I do not remember the exact date that I went underground. I know that the Emergency Regulations came into operation after I went underground.

20

One Lim Kiang alias Foong Choon Lay instructed a woman terrorist named Ah Choo to hand Ex. P2 to me. This was in May 1952. Prior to Ex. P2 I had a rifle. I carried Ex. P2 on my waist.

It is not always the case that a terrorist of some standing only carries a revolver.

The comrade who was arrested with me carried a rifle.

Whenever three terrorists are out one of them will be the leader.

30

I was never a leader of any terrorist section.

Ex. P2 is a good revolver.

I had no difficulty in understanding the Temiars when I spoke to them.

I learnt Temiar in the course of the five years that I went underground. Off and on I lived in the same areas where the Temiars lived. I had been asking Temiars for food and they always gave me it.

I made up my mind to surrender about one month before my arrest. Before that I did not know what would be the attitude of Government towards us.

40

I always carried my revolver with me. I had the revolver on my person when I was arrested.

5 or 6 Temiars could easily overpower me and my comrade.

If I had no intention to surrender I would have fought the Temiars instead of allowing myself to be arrested by them.

No Re'Xn.

10 By 1st Assessor. It was in Perak when I first went underground.

By Court. When I was arrested I had also on my person two fountain pens, a wrist-watch and £395/- cash.

In the High Court

Defence Evidence

No. 9.

Wong Pooh Yin, Cross-examination - continued.

CASE FOR DEFENCE

No. 10.

COURT PROCEEDINGS, CONVICTION AND SENTENCE

11.15 a.m. Benjamin addresses:

20 If Accused had the genuine intention to surrender and had offered the firearm to the first group of Temiars Accused is not guilty.

Pamphlets have been dropped by the thousands calling upon the terrorists to surrender.

P.W.1 and P.W.2 are not to be believed.

Prosecution not calling Long Babi - Unfavourable presumption against Prosecution to be drawn.

11.30 a.m. Jennings addresses:-

Defence could have called Long Babi.

"Intention" and "Excuse" not to be confused.

11.30 a.m. I sum up.

30 11.50 a.m. Assessors do not wish to retire.

No. 10.

Court proceedings, conviction and sentence, 21st July, 1953.

In the High
Court

No. 10.

Court
proceedings,
conviction
and sentence,
21st July,
1953 -
continued.

1st Assessor is of the opinion that the Accused is
guilty of the charge.

2nd Assessor is of the opinion that the Accused is
guilty of the charge.

I agree with the opinions of both Assessors.

I convict the Accused.

Sentence of death is pronounced on the
Accused.

On being informed of his right of appeal, Ac-
cused says he wishes to appeal.

Ex. P2 and Ex. P3 to the Police.

Sgd. A. Hamid.
21.7.'53.

10

No. 11.

Summing-up,
21st July, 1953

No. 11.

SUMMING-UP.

KOTA BHARU ASSIZE

Tuesday, 21st July, 1953.

KOTA BHARU CRIMINAL (EMERGENCY) TRIAL No.11/53.

Public Prosecutor Vs. Wong Pooch Yin alias
Kwang Sin alias Kar Sin
s/o Wong Niang Fui.

20

SUMMING-UP

Gentlemen Assessors,

You have heard the evidence for the prosecu-
tion and for the defence. You have also heard the
addresses of learned counsel for both sides. It
is now left for me to sum-up the evidence as plac-
ed before you, and to direct you on the law as I
consider applicable to this case in order to assist
you in arriving at your decision.

30

Your duty as assessors is to decide the case
on the facts from the evidence adduced before you

as to whether the accused had committed the crime with which he is alleged to have committed or not.

In the High Court

No. 11.

Summing-up,
21st July 1953
- continued.

10 I should like to tell you at the beginning that there is only one issue before you and that is a simple one. The charge as you have seen from the copy of the charge which is before you concerns carrying "a firearm", an offence punishable with death. The issue is whether the accused on this particular day, the 25th November, 1952, carried a
20 revolver on his person. Your duty as I have already indicated to you will be just concerned with the finding as to whether the accused had committed the act or the crime or he had not committed it. You are not in any way concerned with the result of your decision. That is a matter which concerns some other authority. Now, as judges of facts, you have got to decide which fact you consider to be proved and which not proved; which aspect of the story of the prosecution and of the defence
30 you accept or reject and then after applying to those facts the law which I shall direct you in due course come to your own conclusion. In the course of my summing-up I may be commenting on the evidence or on the facts. I may express my opinions on those facts, but I would like you to realise that you are not bound in any way by these opinions. You have got to decide the case solely and entirely on your own independent opinion. In other words, you have got to decide this case on
40 the evidence you have heard and on the opinions that you yourselves formed only.

In all criminal cases the accused is assumed to be innocent of the crime with which he is charged unless and until the prosecution have proved their case beyond reasonable doubt. Accused is not bound to prove his innocence. Now it is difficult to define 'proof' although the Evidence Ordinance lays down the definition. The kind of proof required is not mathematical or absolute
40 proof but that which would satisfy you, if you were deciding an important matter in your own business or in your own private lives in which you dared not take a risk.

As I have said the accused is innocent of the charge unless the prosecution have proved their case beyond reasonable doubt (reasonable doubt should be a doubt which honest men reasonably considering the matter would hold and not a vague or fanciful or fantastic doubt under which you try to
50 cover or avoid a distasteful duty or evade a wearisome task). It must be a genuine doubt based on

In the High
Court

No.11.

Summing-up,
21st July 1953
- continued.

the evidence of the case placed before you. The degree of proof required of the defence is very much less than that required from the prosecution. He has only to prove the probability that the facts do exist.

This alleged incident took place some eight or nine months ago, sometime in November last year. The case for the prosecution depended mostly, if not, entirely on the evidence of the Temiar witnesses. You have seen for yourselves those witnesses and it is for you as reasonable men of the world to give what allowance, if any, to witnesses of the type to which they belong. You have got to give allowance for their intelligence and mentality. You perhaps know more about Temiars than I do, and so I shall leave the question of credibility of their evidence to your consideration. The fact that the accused had the revolver at the time in question is not disputed. There was clear evidence that he had no authority for carrying the revolver. The defence, as I can see it from the cross-examination of the prosecution witnesses and from the accused's evidence was that while not denying having the revolver with him, said that he was justified in having it because he had informed some of the Temiars of his intention to surrender himself to the authorities and that he was told to keep it till arrangements for the surrender had been made and that his arrest was really deceitful on the part of the Temiars who were out to benefit from rewards offered by Government for captured terrorists. You have heard the submission of learned counsel for the defence that it could not be an offence if the accused had the genuine intention to surrender the revolver and to offer it to the first group of Temiars. To this submission I am not inclined to agree because intention to surrender is no defence to a charge of possession or carrying of a firearm. If this can be a defence any accused person found with a firearm can always absolve himself from the charge by saying that at the time he was found with it he had the intention to surrender it to the authorities. That defence can only go towards mitigating the sentence.

What did the accused have at the back of his mind to meet P.K.I., the Penghulu or the Temiars? Was it to effect his surrender or was it something else? It is for you to decide on this point. Not a single main prosecution witness would concede that the accused ever indicated to give himself up.

10

20

30

40

50

Well, you have nevertheless to give every consideration to the accused's story and to form your opinion whether his story is acceptable or not. If you consider that the story is reasonably probable and it raises in your minds a genuine doubt as to the truth of the prosecution story then you must give the benefit of that doubt to the accused.

In the High
Court

No.11

Summing-up,
21st July 1953
- continued.

10

Lastly, if you have any doubt on the whole case or on any aspect of the case that doubt must always resolve in favour of the accused.

I think this is about all I can say to you. I will now call upon you for your opinions as to whether the accused is guilty of the charge or is not guilty of the charge. Do you wish to retire?

Taken down by me and seen by Hon. Judge.

(Sd.) Ng Yeow Hean,
Secretary to Judge.

No. 12

NOTICE OF APPEAL

In the Court
of Appeal

20

THE SUPREME COURT OF THE FEDERATION OF MALAYA

In the Court of Appeal at Kuala Lumpur

Criminal Appeal No. 57 of 1953

No.12.

Notice of
Appeal,
31st July, 1953

BETWEEN:-

Wong Pooh Yin @ Kwang Sin @
Kor Sin s/o Wong Niang Fui ... Appellant

- and -

The Public Prosecutor ... Respondent
(In the matter of Emerg: S.C.Cr.Trial No.11/53)

NOTICE OF APPEAL

30

TAKE NOTICE that Wong Pooh Yin @ Kwang Sin @ Kor Sin s/o Wong Niang Sin appeals to the Court of Appeal against the decision of Honourable Mr.

In the Court
of Appeal

No. 12.

Notice of
Appeal,
31st July, 1953
- continued.

Justice Abdul Hamid given at Kota Bharu, on 21st July, 1953, whereby the appellant was convicted on a charge under Regulation 4(1) (a) of the Emergency Regulations, 1951 and sentenced to suffer Death.

The appeal is against sentence only.

Dated this 31st day of July, 1953.

Before me:

Sd. MURAD AHMAD
f. SUPERINTENDENT OF PRISONS
KELANTAN & TRENGGANU R.T.P. of Appellant
(Wong Pooch Yin)

10

The address of service of the appellant is :-
Pengkalan Chepa Prison Camp, Kelantan.

No. 13.

Petition of
Appeal,
16th August,
1953.

No. 13.

PETITION OF APPEAL

TO THE HONOURABLE THE JUDGES OF THE COURT OF
APPEAL.

Wong Pooch Yin @ Kwang Sin @ Kor Sin s/o Wong Niang Fui, the abovenamed appeal to the Court of Appeal against the decision of the Honourable Mr. Justice Abdul Hamid given at Kota Bharu, on 21st July, 1953 on the following grounds:-

20

1. I am still young never had any education or culture. Was living among country people. I was foolish and ignorant. While I was in the jungle, I had a copy of a pamphlet and read the contents of it, I decided to go out and surrender to the Police. I took all the arms which were in my possession arrived at a sakais' house. The sakais promised to take me to the Police Station. I never fought with the sakais but obeyed their orders and taken to Police Station.

30

2. I was ignorant and now realise the law and

Order and I believe the sentence imposed upon me can be made lighter. If I have done a wrong thing, I will never repeat it. I want to prove that I can avoid myself from such ignorant and evil deeds. I hope to become a good citizen. With the heavy sentence I fail to see that I will have better chance to prove my determination.

10 3. I pray that my humble appeal be considered with one sympathy and justice. When I come out as a free man, I want to be an honest and useful citizen. I beg to repeat that I am still young and still anxious for a proper livelihood. Your appellant beg that the sentence be reduced.

Dated this 16th day of August, 1953.

Before me:

Sd: ?
(MURAD AHMAD)
SUPERINTENDENT OF PRISONS
KELANTAN & TRENGGANU

Sd: R.T.P. of Appellant
.....
(WONG POOH YIN)

20 The address of service of the appellant is Pengkalan Chepa Prison Camp, Kelantan.

No. 14.

FURTHER GROUNDS OF APPEAL

1. The charge as framed is defective in that it does not state "without lawful excuse".
2. The learned trial Judge misdirected the assessors in his summing up when he stated as follows:-
"You have heard the submission of learned counsel for the defence that it could not be an offence if the accused had the genuine intention to surrender the revolver and to offer it to the first group of Temiars. To this submission I am not inclined to agree because intention to surrender is no defence to a charge of possession or carrying of a firearm. If this can be a defence any accused person found with a firearm can always absolve himself from the charge by saying that at the time he was found
- 30

In the Court
of Appeal

No. 13.

Petition of
Appeal,
16th August,
1953 -
continued.

No. 14.

Further grounds
of appeal,
26th August,
1953.

In the Court
of Appeal

No. 14.
Further
grounds of
appeal,
26th August,
1953 -
continued.

with it he had the intention to surrender it to the authorities. That defence can only go towards mitigating the sentence".

3. The learned trial judge in his summing up to the assessors did not direct them on the law as to lawful excuse and thereby he misdirected them.

4. The learned trial Judge failed to deal with that part of the evidence before the Court which constituted lawful excuse.

5. The learned trial Judge in his summing up failed to put the case of the defendant properly to the assessors.

10

Dated this 26th day of August, 1953.

(Sd.) K.K. Benjamin
COUNSEL ASSIGNED.

No. 15.

Notes by
Charles Mathew,
C.J.,
5th October,
1953.

No. 15.

NOTES BY CHARLES MATHEW, C.J.

5th October, 1953.

BENJAMIN:- Charge Reg: 4(1)(a) E.R. Summing up - non-direction on "without lawful excuse".

20

I would refer to a Perak trial.
Thomson, J. F.M. Cr.Appeal 19/53 -
summing up.
Arrested on 15.11.52. Man contacted,
waited, for 2 days to collect men.
P.W.l. - surrender.
Summing up positive misdirection -
page 18.

The section should always be read.
Misdirection - Sir M.N. Mukherjea.
Positive misdirection or non-direction.
Learned judge misdirected himself.
Would they have come to any other
decision.

30

On 22nd no lawful excuse - on 25th he
had.

1949 M.L.J. 181
(1951) 1. T.L.R. 368.

Proper direction not given.
Judge never thought of lawful excuse.
Conviction should be quashed.

40

CLOUGH I do not agree that he was going to
surrender.
(1896) 2 Q.B. 310.
L.J. (1871) p.63. (Q. v. Harvey).
Temiars could not confer authority.

BENJAMIN: 16 M.L.J. (1950), pp. 145, 147.

Appeal dismissed.

Sd: CHARLES MATHEW.

In the Court
of Appeal

No. 15.

Notes by
Charles Mathew,
C.J.,
5th October,
1953 -
continued.

No. 16.

NOTES BY H.W. WILSON, J.

No. 16.

Notes by H.W.
Wilson, J.,
5th October,
1953.

Monday, 5th October, 1953.

(Regn. 4(1)(a) of Emergency Regulations, 1951)

Benjamin for Appellant (assigned).

Clough (D.P.P.) for Respondent.

Benjamin:

One Assessor recommended to mercy - not on record.
Page 20 - misdirected himself - did not direct as-
sessor on Regn. 4(1).
Defence was lawful excuse.

Summing-up in Perak case.

Whole prosecution story sounds like fairytale.

Page 18. No reference to "without lawful excuse."

It is lawful excuse if going to surrender.

Misdirection - quotes from Indian text book - there
is no direction as to lawful excuse.

1949 M.L.J. 181.

T.L.R. 1951 Part I, 368.

A.I.R. 1926 Calcutta.

Clough:

Thomson's summing-up not good in law.

Root is how firearm first acquired.

Dickens v. Gill - 1896 Q.B.D. Vol.2, 310.

Reg. v. Harvey - L.J. 1871 p.63.

In the Court
of Appeal

No. 16.

Notes by H.W.
Wilson, J.,
5th October,
1953 -
continued.

Benjamin:

In Dickens v. Gill no question of mens rea.
1950 M.L.J. at 147.

Appeal dismissed. Reasons to be given in
writing.

Sd: H.W. WILSON.

No. 17.

Notes by
W. Buhagiar, J.,
5th October,
1953.

No. 17.

NOTES BY W. BUHAGIAR, J.

5th October, 1953 at Kuala Lumpur.

Benjamin for Appellant (assigned).
Clough, Deputy Public Prosecutor, for Public
Prosecutor.

10

Benjamin: One of the assessors made a recommenda-
tion for mercy. This is not on the record.
Page 20: Where the judge says that intention to
surrender is no defence.
Misdirection on Regulation 4(1) "no lawful excuse".
Appellant had lawful excuse because he had intent-
ion to surrender.

Summing up in Perak Criminal Trial No.114 of 1952.

20

Page 19: "The only issue"

Page 20: "You have heard"

Judge misdirected himself as to law.

(1949) Malayan Law Journal, 181.

T.L.R. 1951 Pt. 1, p. 368.

A.I.L.R., 26 Calcutta.

Summing up in Perak Criminal Trial No.23 of 1953.

Clough: (1896) 2 Q.B.D., 310. At page 314: "What
is it that the Legislature has said is not to be
done?" At page 318: "What is the excuse averred
here?"

30

Queen v. Harvey, (1871) L.J., p.63. Wills, J. at
p. 65.

Benjamin: (1950) 16 Malayan Law Journal, at p.147.

Appeal dismissed. Reasons in writing.

(Signed) W. BUHAGIAR,
JUDGE.

5th October, 1953.

No. 18.

O R D E R

In the Court
of Appeal.

No. 18.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT KUALA LUMPUR

Order,
5th October,
1953.

FEDERATION OF MALAYA CRIMINAL APPEAL NO.57 OF 1953
(Kota Bharu Criminal Trial No. 11 of 1953)

Wong Pooh Yin alias Kwang Sin)
alias Kar Sin s/o Wong Niang Fui) ... Appellant

Against

10 The Public Prosecutor ... Respondent

Before:- The Hon. Sir Charles Mathew,
Chief Justice, Federation of Malaya,
The Hon. Mr. Justice Wilson,
The Hon. Mr. Justice Buhagiar.

IN OPEN COURT
This 5th day of October, 1953

O R D E R

20 This appeal coming on for hearing in the presence of Mr. K.K. Benjamin, Counsel for the above-named Appellant and Mr. P.G. Clough, Federal Counsel on behalf of the Respondent IT IS ORDERED that the appeal be dismissed.

Given under my hand and the seal of this Court
this 5th day of October, 1953.

(Seal)

Sd/- P. Samuel.
Senior Asst. Registrar,
Court of Appeal,
Federation of Malaya.

In the Court
of Appeal

No. 19.
GROUND OF JUDGMENT

No. 19.

Grounds of
Judgment,
12th November,
1953.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL, KUALA LUMPUR

Federation Cr: Appeal 57/53

Kelantan Cr: Trial No.11/53

Wong Pooh Yin alias			
Kwang Sin alias Kar Sin	...	Appellant	
versus			
Public Prosecutor	...	Respondent	10

Cor: Mathew C.J;
Wilson & Buhagiar JJ.

GROUND OF JUDGMENT

The appellant was convicted of carrying a revolver without lawful authority contrary to regulation 4(1)(a) of the Emergency Regulations 1951 and was sentenced to death. Mr. Benjamin who appeared for the appellant has made two submissions:-

- (i) the learned trial judge did not adequately or at all direct the assessors on the question of "lawful authority" and "lawful excuse"; 20
- (ii) the learned trial judge was wrong in not directing the assessors that if they thought that the appellant was attempting to surrender he had a lawful excuse for carrying the revolver.

Regulation 4(1)(a) reads:-

"Any person who without lawful excuse, the onus of proving which shall be on such person, carries or has in his possession or under his control - 30

(a) any fire-arm, without lawful authority therefor shall be guilty of an offence and shall on conviction be punished with death."

In the Court
of Appeal

No. 19.

(The words underlined were added by L.N. 363 of 1.7.52)

Grounds of
Judgment,
12th November,
1953 -
continued.

10 The regulation aims at the absolute prohibition of the carrying, possessing or controlling of fire-arms, ammunition and explosives except under licence or by members of the security forces or by persons exempted from the provisions of the regulation. A person carrying, possessing or controlling a fire-arm without authority can only avoid conviction if he can prove that he has a lawful excuse for contravening the regulations. The regulation contemplates an absence of lawful authority being cured by lawful excuse.

20 It is no concern of ours to define the meaning of "lawful excuse", and it would clearly be undesirable to attempt to do so, as each case requires to be examined on its individual facts. Mr. Benjamin has submitted that if a terrorist is coming in to the authorities to surrender and brings with him a fire-arm or other thing covered by the regulation, he has proved a "lawful excuse" which would entitle him to acquittal. We think it right at once to say that the policy which is adopted by the Government to induce terrorists to surrender is no concern of ours, and for the Courts to attempt to apply a policy that has not been made the subject of a written law, can only lead to confusion. Whether an individual is prosecuted or not is a matter entirely for the authorities responsible for launching prosecutions, and it cannot be submitted successfully as a defence that Government in general terms has indicated that certain offences would be overlooked if offenders took a certain course.

40 Mr. Benjamin quoted from the summing-up of a learned judge in another trial (Perak Cr: Trial No. 114/1952), and submitted that a similar direction should have been given in this case. It is convenient to set out the relevant passage in the earlier summing-up quoted:-

"The only question in the case is whether he had lawful excuse. If he had, that is a good

In the Court
of Appeal.

No. 19.

Grounds of
Judgment,
12th November,
1953 -
continued.

defence but as the law stands it is for him to prove it. That does not mean that he must prove it up to the hilt but it does mean that he must make you think that it is reasonable and probable that he had a lawful excuse. As I understood him, he would have you believe that on that particular morning when he was found in possession by the Goorkhas he was coming out of the jungle to surrender. Now, if you think that immediately before he was caught he was on his way out to surrender, and he was carrying that hand grenade simply and solely for the purpose of taking it to the police, that, of course, is a lawful excuse. If you think that that may reasonably and probably be true it would be your duty to say that he is not guilty."

10

The questions for our decision are whether that direction is a correct direction in law and whether a direction to that effect should have been given in this case where a "lawful excuse" of the same kind was alleged by the appellant at his trial.

20

There are two cases which are of some assistance to us. In *Dickins v. Gill*, (1896) 2 Q.B.310, the head-note reads:-

"By section 7(c) of the Post Office (Protection) Act, 1884, 'a person shall not make, or, unless he shews a lawful excuse, have in his possession, any die, plate, instrument, or materials for making any fictitious stamp.'

30

The proprietor of a newspaper circulating among stamp-collectors and others caused a die to be made for him abroad, from which imitations or representations of a current colonial postage-stamp could be produced. The only purpose for which the die was ordered by him, and was subsequently kept in his possession, was for making upon the pages of an illustrated stamp catalogue or newspaper, called 'The Philatelist's Supplement', illustrations in black and white and not in colours of the colonial stamp in question, this special supplement being intended for sale as part of his newspaper:-

40

HELD, that the possession of a die for making a false stamp known to be such to its possessor, was, however innocent the use that he intended to make of it, a possession without lawful excuse within the meaning of the above section."

50

We would refer to 2 passages from the judgment of Grantham J:-

In the Court
of Appeal

No. 19.

Grounds of
Judgment,
12th November,
1953 -
continued.

10

(p.314): "The case is no doubt one of considerable importance and deserving of careful argument; but I have been unable to alter the conclusion which I arrived at early in the proceedings, that the learned magistrate mistook the meaning of the words 'lawful excuse' in arriving at his determination. Practically what he has done amounts to saying that in his judgment the fact that the respondent believed that he was not doing wrong amounted to a lawful excuse within the meaning of the section. I cannot think that that can be so, or that belief that a person is not doing wrong when in fact he is doing wrong can afford him a lawful excuse."

20

(p.315) "Is it a lawful excuse that he wanted to shew people what the original stamp was? I think not, for it was wrong for him to have the die in his possession at all."

In Winkle v. Wiltshire, (1951) 1 T.L.R. page 368, the head-note reads:-

30

"By the Stamp Duties Management Act, 1891, and section 65(1)(b) of the Post Office Act, 1908, as applied to the case of national insurance stamps by the National Insurance and Industrial Injuries (Stamps) Regulations, 1948: 'A person shall not....have in his possession, unless he shows a lawful excuse any fictitious stamp.'

A person who innocently buys fictitious insurance stamps which had been unlawfully sold to him by one not authorised or licensed to deal in such stamps, does not show a lawful excuse for having the stamps in his possession. To take advantage of the defence afforded by the regulation he must also show that he obtained the stamps by means of a lawful transaction."

40

We would refer to the following passage from the judgment of the Lord Chief Justice:-

(p.370) "The only way in which that decision could possibly be upheld is by saying that the words 'without lawful excuse' are the same as 'with knowledge', because to justify

In the Court
of Appeal

No. 19.

Grounds of
Judgment,
12th November,
1953 -
continued.

the magistrate's finding the section and regulation would have to read:

'A person shall not knowingly have in his possession any fictitious stamp, or shall not have in his possession any stamp which he knows to be fictitious'.

That is not what the section states: the words are 'without lawful excuse', and it cannot be a lawful excuse to say: 'I did not know that the stamps were forged', because that could only be a defence if the person charged had bought the stamps in a regular way at a post office or from a licensed dealer, who are the only persons who can sell stamps without incurring a penalty. Of course, if a person bought at a post office stamps which turned out to be fictitious, he would have a perfectly lawful excuse unless, indeed, he recognised and knew that the stamps were fictitious; in which case, he could not have a lawful excuse."

10

20

In the present case the carrying of a fire-arm is absolutely prohibited by the regulation unless a lawful excuse is found. The excuse claimed by the appellant to be lawful is in short: "I was on my way to surrender". That may be a ground for commutation of sentence, but it cannot cure his admitted carrying of a fire-arm without lawful authority. He is saying in effect: "I admit having a revolver without lawful authority, but as I am bringing it in to give to the police I have a lawful excuse", or, put in another way: "my decision to surrender made the carrying of the revolver lawful." "My intention to cease committing an offence provides a lawful excuse for continuing temporarily to commit the offence". This is tantamount to saying that a man can change the nature of his act, from an unlawful to a lawful one, by a mere change in his intention. That may be true of offences of which intention is an ingredient, but it is not true of offences to which the doctrine of "absolute prohibition" applies.

30

40

In our view, even accepting the bona fides of the appellant's intention to surrender, this could not constitute a lawful excuse. If an administrator who is compelled by law to take possession of a deceased's property is found to have an unlicensed fire-arm in a suit-case not yet opened, he

clearly has a lawful excuse. If a person finds a stick of dynamite on the road and takes it to the appropriate authorities, he clearly has a lawful excuse. If a terrorist after some time in the jungle decides to surrender with his arms, he has an excuse, and if he is acting on a "surrender leaflet" addressed to him by the security forces, he may have a political or an administrative excuse but, in our opinion, that does not amount to a lawful excuse within the meaning of the regulation.

In the Court
of Appeal

No. 19.

Grounds of
Judgment,
12th November,
1953 -
continued.

In our view, the learned trial judge adequately directed the assessors on "lawful authority", and rightly rejected the submission of counsel for the accused at the trial that a "lawful excuse" had been established which entitled the accused to acquittal. The fact that he did not actually use the words "lawful excuse" did not appear to us to be of moment.

We dismissed the appeal.

Sd. CHARLES MATHEW
CHIEF JUSTICE,
Federation of Malaya.

Kuala Lumpur
12th November 1953.

In the Privy
Council

No. 20.

No.20.

ORDER IN COUNCIL GRANTING SPECIAL
LEAVE TO APPEAL IN FORMA PAUPERIS.

Order in
Council grant- (L.S.)
ing special
leave to
appeal in
forma pauperis,
20th January,
1954.

AT THE COURT OF SAINT JAMES
The 20th day of January, 1954
PRESENT

HIS ROYAL HIGHNESS THE DUKE OF GLOUCESTER
EARL OF HAREWOOD

LORD PRESIDENT
CHANCELLOR OF THE DUCHY
OF LANCASTER

MR. LENNOX-BOYD
MR. JAMES CLYDE

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WHEREAS Her Majesty, in pursuance of the
Regency Acts, 1937 to 1953, was pleased, by Letters
Patent dated the twentieth day of November, 1953,
to delegate to Her Majesty Queen Elizabeth The
Queen Mother, Her Royal Highness The Princess
Margaret, His Royal Highness The Duke of Gloucester,
Her Royal Highness The Princess Royal and the Earl
of Harewood, or any two or more of them, as Coun-
sellors of State, full power and authority during
the period of Her Majesty's absence from the
United Kingdom to summon and hold on Her Majesty's
behalf Her Privy Council and to signify thereat
Her Majesty's approval of anything for which Her
Majesty's approval in Council is required:

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AND WHEREAS there was this day read at the
Board a Report from the Judicial Committee of the
Privy Council dated the 13th day of January, 1954
in the words following, viz. :-

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"WHEREAS by virtue of His late Majesty King
Edward the Seventh's Order in Council of the
18th day of October 1909 there was referred
unto this Committee a humble Petition of Wong
Pooch Yin alias Kwang Sin alias Kar Sin son of
Wong Niang Fui in the matter of an Appeal from
the Court of Appeal of the Federation of Malaya
between the Petitioner Appellant and the Public
Prosecutor Respondent setting forth (amongst
other matters); that the Petitioner prays for
special leave to appeal in forma pauperis to

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10 Your Majesty in Council against the Judgment of
 the Court of Appeal of the Federation of Malaya
 dated the 5th October 1953 whereby for reasons
 delivered on the 12th November 1953 the Court
 dismissed the Appeal of the Petitioner from the
 decision of the High Court of the Federation of
 Malaya on the 21st July 1953 whereby the
 Petitioner was convicted on a charge under
 Regulation 4(1)(a) of the Emergency Regulations
 1951 and sentenced to death; that the Petition-
 20 er was prosecuted on a charge that on or about
 the 25th day of November 1952 in the Temiar
 Ladang Area known as Gua Chah in the District
 of Gua Musang, Ulu Kelantan he did carry a
 firearm, to wit, a white handled revolver .38
 without lawful authority therefor and thereby
 committed an offence punishable under the Regu-
 lation 4(1)(a) of the Emergency Regulations
 1951; that the trial took place under the Emer-
 30 gency (Criminal Trials) Regulations 1948; that
 the case for the prosecution was that the
 Petitioner with another Chinese was arrested on
 the 25th November 1952 by a party of Temiars
 and found to be carrying a revolver; that the
 case for the defence was that at the time of
 the 'arrest' the Petitioner had already surren-
 dered or had the intention of surrendering and
 therefore had a 'lawful excuse' for carrying the
 revolver; that it is submitted that the trial
 30 judge misdirected or failed adequately to direct
 the assessors as to the meaning of 'lawful ex-
 cuse' and that the Court of Appeal was wrong in
 holding that the defence did not establish a
 'lawful excuse' for carrying the revolver: And
 humbly praying Your Majesty in Council to grant
 the Petitioner special leave to appeal in forma
 pauperis from the Judgment of the Court of
 Appeal dated the 5th October 1953 or for further
 or other relief:

40 "THE LORDS OF THE COMMITTEE in obedience to
 His late Majesty's said Order in Council have
 taken the humble Petition into consideration
 and having heard Counsel in support thereof and
 in opposition thereto Their Lordships do this
 day agree humbly to report to Your Majesty as
 their opinion that leave ought to be granted to
 the Petitioner to enter and prosecute his Appeal
 against the Judgment of the Court of Appeal of
 the Federation of Malaya dated the 5th day of
 50 October 1953:

In the Privy
Council

No. 20.

Order in
 Council grant-
 ing special
 leave to
 appeal in
forma pauperis,
 20th January,
 1954 -
 continued.

In the Privy
Council

No. 20.

Order in
Council grant-
ing special
leave to
appeal in
forma pauperis,
20th January,
1954 -
continued.

"And their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

NOW, THEREFORE, His Royal Highness The Duke of Gloucester and the Earl of Harewood being authorized thereto by the said Letters Patent, have taken the said Report into consideration and do hereby, by and with the advice of Her Majesty's Privy Council, on Her Majesty's behalf approve thereof and order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

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Whereof the High Commissioner for the Federation of Malaya for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

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W.G. AGNEW.

E X H I B I T SExhibitsP1. - EMERGENCY TRIAL CERTIFICATE

P1.

Emergency
trial
certificate,
28th April,
1953.EXHIBIT "P1"EMERGENCY (CRIMINAL TRIALS) REGULATIONS, 1948.

I, Brendan Joseph Jennings, Deputy Public
Prosecutor, Kelantan and Trengganu:-

- 10 (a) certify in accordance with the provisions of
Regulation 7 that the trial of Wong Pooch Yin
alias Kwang Sin alias Kar Sin s/o Wong Niang
Fui is a proper case for trial under the
aforesaid Regulation on a charge (i) that he
on or about the 25th day of November, 1952, in
the Temiar Ladang Area known as Gua Cha in the
District of Gua Musang, Ulu Kelantan, did
carry a firearm, to wit, a white handled re-
volver .38 without lawful authority therefor
and thereby committed an offence punishable
under Regulation 4(1)(a) of the Emergency
20 Regulations, 1951, and (ii) that he at the
date and place aforementioned did consort with
Cheah Fong Sin alias Ah Pooi s/o Cheah Wai
who had in his possession a firearm, to wit,
a rifle in contravention of the provision of
Regulation 4 of the Emergency Regulations,
1951, in circumstances which raised a reason-
able presumption that he was acting with the
said Cheah Fong Sin in a manner prejudicial
to the maintenance of public order and there-
30 by committed an offence punishable under
Regulation 5(1) of the said Regulation;
- (b) designate Kota Bharu, in accordance with Regu-
lation 8, as the place of trial by the High
Court.

Dated this 28th day of April, 1953.

Sgd. B.J. Jennings
DEPUTY PUBLIC PROSECUTOR,
KELANTAN & TRENGGANU.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL
OF THE FEDERATION OF MALAYA

B E T W E E N :

WONG POOH YIN alias
KWANG SIN alias
KAR SIN ... Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

RECORD OF PROCEEDINGS

Hy. S.L. Polak & Co.,
20-21, Took's Court,
Cursitor Street,
London, E.C.4.
Solicitors for the Appellant.

Charles Russell & Co.,
37, Norfolk Street,
London, W.C.2.
Solicitors for the Respondent.